

## **REMARKS**

The present Amendment is in response to the Examiner's Office Action mailed 12 December, 2007. Claims 1, 11-13, 15, 16, 18-20, and 22 have been amended and new claims 23 and 24 have been added. Claims 10 and 17 have been canceled, their subject matter having been incorporated into claims 16 and 22, respectively. Claims 1-9, 11-16, and 18-24 are now pending as a result of the aforementioned amendments and cancellations. The Examiner's indication of allowable subject matter in claims 16 and 22 is appreciated. Reconsideration of the application is respectfully requested in view of the following remarks.

### **I. General Considerations**

#### **A. Claim Amendments and/or Cancellations**

With particular reference to the claim amendments, Applicants note that while claims 1, 11-13, 15, 16, 18-20, and 22 have been amended herein, and claims 10 and 17 have been canceled, such amendments and cancellations have been made in the interest of expediting the allowance of this case. Notwithstanding, Applicants, may, on further consideration, determine that claims of broader scope than those now presented are supported. Accordingly, Applicants hereby reserve the right to file one or more continuing applications with claims broader in scope than the claims now presented.

Consistent with the points set forth above, Applicants submit that neither the claim amendments set forth herein, nor any other claim amendments, claim cancellations or statements advanced by the Applicants in this or any related case, constitute or should be construed as, an implicit or explicit surrender or disclaimer of claim scope with respect to the cited, or any other, references.

#### **B. Remarks**

Applicants respectfully note that the remarks herein do not constitute, nor are they intended to be, an exhaustive enumeration of the patentable distinctions between any cited references and the invention, example embodiments of which are set forth in the claims of this application. Rather, and in consideration of the fact that various factors make it impractical to enumerate all the patentable distinctions between the invention and the cited art, as well as the fact that the Applicants have broad discretion in terms of the identification and consideration of the base(s) upon which the claims distinguish over the cited references, the distinctions identified

and discussed herein are presented solely by way of example. Consistent with the foregoing, the discussion herein is not intended, and should not be construed, to prejudice or foreclose contemporaneous or future consideration by the Applicants, in this case or any other, of additional or alternative distinctions between the invention and the cited references; and/or, the merits of additional or alternative arguments.

Applicants note as well that the remarks, or a lack of remarks, set forth herein are not intended to constitute, and should not be construed as, an acquiescence, on the part of the Applicants: as to the purported teachings or prior art status of the cited references; as to the characterization of the cited references advanced by the Examiner; or as to any other assertions, allegations or characterizations made by the Examiner at any time in this case. Applicants reserve the right to challenge the purported teachings and purported prior art status of the cited references at any appropriate time.

## **II. Claim Objections**

The Examiner has objected to claims 16 and 22 as being dependent on a rejected base claim, but has indicated that claims 16 and 22 would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. The Examiner's indication of allowable subject matter in claims 16 and 22 is appreciated.

In connection with the foregoing, Applicants respectfully note that an objection, by definition, concerns only the form of the claim(s) (as distinguished from the substance of the claim) with respect to which the objection has been posed. *See* Manual of Patent Examining Procedure §§ 706.01, 608.01(n) (emphasis added). Thus, simply rewriting a dependent claim in the manner suggested by the Examiner constitutes only a change to the format of the claim and, without more, has no effect with regard to the substance of the rewritten claim.

Because Applicants have made no change to claims 16 and 22 other than to rewrite such claims in independent form to include all of the limitations of the base claim and any intervening claims, Applicants respectfully submit that no change has been made herein to the substance of such claims and, further, that such claims, as rewritten herein, are now in condition for allowance.

### **III. Claim Rejections Under 35 U.S.C. § 102**

The Examiner has rejected claims 1-15 and 17-21 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,850,388 to Anderson et al. ("*Anderson*"). Applicants respectfully disagree. Nevertheless, as indicated above, Applicants have rewritten claims 16 and 22 in independent form to expedite allowance of the claims.

Moreover, claim 1, although of different scope than allowable claim 22, has been amended to recite similar language: "wherein determining errors further comprises filtering the data trace to eliminate data that is not accurately represented as a result of analyzer position." Accordingly, Applicants respectfully submit that the rejection of claims 1, 16, and 22 has been rendered moot and withdrawal of the rejection is respectfully requested. In addition, Applicants respectfully submit that dependent claims 2-9, 11-15, and 18-21 are allowable at least by virtue of their dependence from one of allowable claims 1, 16, or 22.

Furthermore, new claims 23 and 24 have been added by this amendment. Support for new claim 23 can be found at least in paragraph [0080] and in original claim 11 of the original specification. Support for new claim 24 can be found at least in paragraph [0067] of the original specification. Applicants respectfully submit that new claims 23 and 24 are allowable at least by virtue of their dependence from allowable claim 22.

### **CONCLUSION**

In view of the discussion and amendments submitted herein, Applicants respectfully submit that each of the pending claims 1-24 is now in condition for allowance. Therefore, reconsideration of the rejections is requested and allowance of those claims is respectfully solicited. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate the same with the undersigned attorney.

Dated this 16th day of May, 2008.

Respectfully submitted,  
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